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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 99-230
Competition in Markets for the	)	
Delivery of Video Programming	)	

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry, representing cable operators serving over 90 percent of the nation's cable television households, cable programming networks, and manufacturers of cable television equipment.

INTRODUCTION AND SUMMARY

Six years of annual assessments of the status of competition for the delivery of video programming lead to one inescapable conclusion: Competition has become more robust each year, and consumers now have a real choice among substitutable products. Cable's competitors continue to grow by leaps and bounds – from under 3 million customers in 1993 to 14.5 million today. Direct broadcast satellite ("DBS"), in particular, has shown remarkable growth in the past year. Jumping from 7.25 million to 10.05 million subscribers, it enjoys a 38.6 percent annual growth rate. Consumers now have a clear choice: Today 7 out of every 10 new customers, compared to 2 out of 3 a year ago, choose DBS or another multichannel video competitor over cable.

DBS's aggressive growth is attributable to a variety of factors, notably an array of programming packages at prices comparable to cable, and joint marketing arrangements with major players, Bell Atlantic, SBC and America Online. Up-front equipment costs have been virtually eliminated. And the last perceived impediment to DBS's full blossoming – the inability to retransmit local broadcast signals – is about to be resolved by legislation.

Meanwhile, cable's wireline and wireless terrestrial competitors are not standing still. They lure customers away from cable and attract new customers by deploying infrastructure upgrades and offering advanced video, voice and data on a bundled basis market-by-market. Ameritech and BellSouth, in particular, continue to expand their competitive systems. Relatively new but well-funded entrants, RCN and Knology, are targeting densely populated areas from Washington D.C. to California for cable overbuilds. They join an array of other video programming distribution media, including over-the-air broadcast television stations, SMATV and MMDS systems, and video rentals that already face cable operators.

As DBS and other competitors gain ground, cable's share of the multichannel video programming distributor (MVPD) market continues to decline, decreasing in the past year alone by 3 percentage points – to 82 percent. This trend shows no signs of diminishing or reversing course.

Cable still has a sizable portion of the market and competes vigorously to win and maintain customers. But these efforts hardly mean cable can exercise significant market power, as Economists Incorporated ("EI") explains in a paper attached to the comments. EI demonstrates that where a new, fully substitutable product such as DBS challenges an incumbent with almost 100 percent of the market, its presence likely constrains the incumbent's market power long before the incumbent's higher market share disappears. The incumbent may be retaining its share only because it offers prices and services that respond effectively to its competitors.

Competition's emergence in the video marketplace is evident in the price and quality of cable service. Existing and prospective cable customers can readily choose a different provider at comparable cost, nationwide, thanks to DBS competition. Acting as competitors, cable operators are finding ways to offer new and better services to their customers. They continue to invest in infrastructure to provide more new and original programming and additional services. As packaging options become more plentiful from the various MVPDs, cable operators have kept pace by offering more separately priced digital tiers of programming. And while doing so, they have kept prices under control – and still in line with those of their competitors – even as their costs have increased.

I. BASED ON EVERY INDICATOR, VIDEO COMPETITION IS FLOURISHING.

The state of video competition in 1999 is marked by an ever-widening array of players – some old, some new – who are redefining themselves in a new era of convergence. With the elimination of previous barriers to competition, telephone companies have entered the business of providing video programming, just as cable operators and other multichannel video distributors ("MVPDs") compete to provide telephone service. Moreover, digital technology is blurring the lines between providers of video, voice and data services, and is driving communications companies to ensure that they are capable of offering full-service product lines that at least include video programming.

Already, the video market in which cable operators compete for viewership today is competitive. A variety of alternative programming providers, including broadcast television, wireless cable, video stores – and, most significantly, DBS – offer consumers a range of choices. By every indicator, the market of multichannel video competition in which cable operators compete is becoming vibrantly competitive and irreversible. DBS, in particular, has solidified its competitive strength through mergers and joint marketing agreements with telephone companies and with the dominant Internet provider. DBS subscribership has, in the past year, continued its rapid and steady growth. Indeed, this year the numbers show that <u>seven out of ten new MVPD customers are choosing DBS or another MVPD over cable</u>. And telephone companies, in addition to marketing DBS, are finding other ways to compete effectively with cable via wireline, wireless or traditional copper lines.

Newer competitors, such as RCN and Knology, were just getting off the ground last year in providing open video systems and wireline overbuilds. This year, they have become more and more aggressive competitors in communities around the country. SMATVs and MMDS systems continue to compete against cable, particularly in multiple dwelling units, buoyed by developments in digital technology and recent regulatory changes related to inside wiring. Meanwhile, broadcast television stations continue to play a very significant role in terms of overall viewership, and their competitive presence will be augmented by the additional free spectrum they have been granted to offer high definition or multicast digital television.

As we show below, these players are competing with incumbent cable operators for customers today and positioning themselves to compete with the companies of tomorrow in the provision of bundled video, voice, data and Internet services.

A. The Overall Trends and Numbers Reflect A Highly Competitive Market.

In the Fifth Annual Report on video competition, the Commission recognized the steady downward trend in cable's share of MVPD subscribership.[1] This trend, which appears to be irreversible, accelerated in the past year. This year the cable industry's share is down to 82 percent, a drop of 3 percentage points over last year's numbers and a drop of 5 percentage points in the last two years. The percentage decrease, in other words, was 50% greater this year than last.[2]

Market Share of Multichannel Video Program Distributors (MVPDs)
July 1999

MVPD	Subscribers (in Millions)	Percent of MVPD Market
DBS	10.05	12.28%
C-Band	1.80	2.20%
MMDS	0.92	1.12%
SMATV	1.45	1.77%
Local Telephone Companies	0.35	0.43%
Total Non-Cable	**14.57**	**17.81%**
Cable	**67.26**	**82.19%**
Total Multichannel Subscribers	**81.83**	**100.00%**

Source: NCTA estimates based on data from A. C. Nielsen, Paul Kagan Associates, SkyREPORT, and individual companies.

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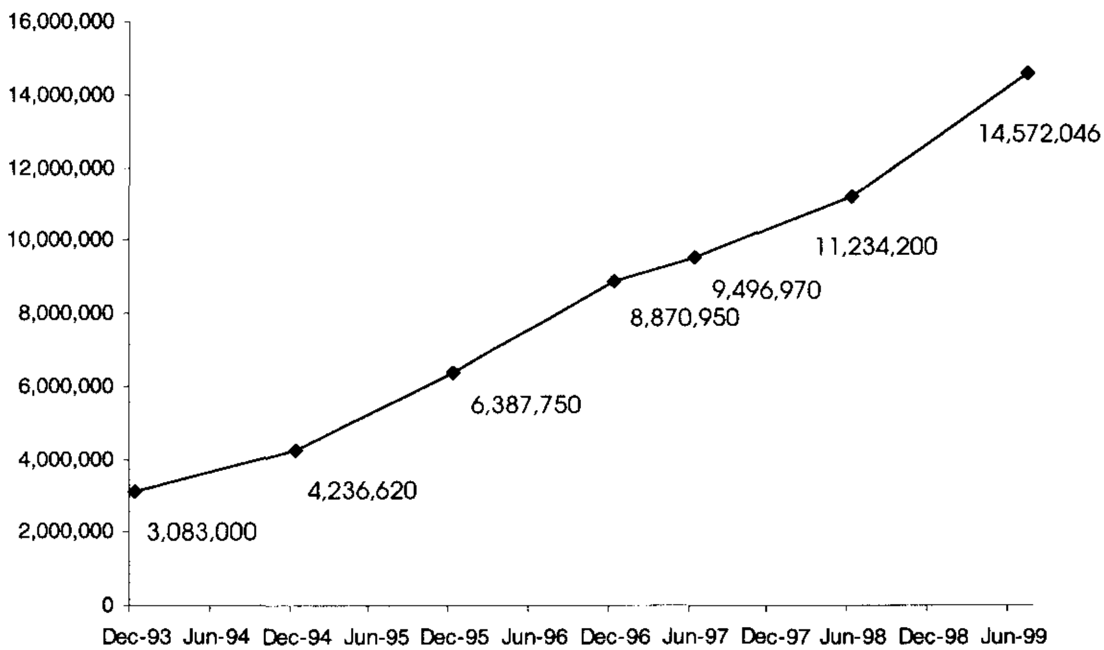
1 Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fifth Annual Report, 13 FCC Rcd 24284 (1998) ("Fifth Annual Report").

2 While there is no perfect measure, subscribership to MVPD services is an appropriate statistic for assessing market shares in the local multichannel video marketplace. Moreover, for reasons discussed in our comments in the pending horizontal ownership proceeding, as well as in the Public Interest Statement submitted by AT&T and MediaOne in connection with their application for transfer of control, it is also the most appropriate and practical statistic for measuring horizontal concentration at the national level, particularly given the significant increase in MVPD competition in the six years since the rule was adopted. NCTA Comments in MM Docket No. 92-264, filed August 14, 1998, at 17-19; AT&T/MediaOne Public Interest Statement at 62-63 and n.153. Moreover, as other parties have noted, measuring national horizontal concentration in terms of "homes passed" will necessarily be flawed and unreliable because of the inherent difficulties in measuring the number of "homes" or potential subscribers to which television services are available. See, e.g., TCI Comments in MM Docket No. 92-264, filed on August 14, 1998, at 60-61 ("the number of cable television homes passed nationwide could be anywhere from 96 million to approximately 115 million").

As DBS climbs in popularity, cable's other competitors are generally holding firm and in some cases showing new signs of growth. The overall expansion in non-cable MVPD households in only a few short years, sparked by DBS (but including telephone companies, utilities, MMDS, and SMATVs) is pronounced. In 1993, total non-cable MVPD subscribership was under 3 million. Six years later, it is 14.5 million – almost <u>five times</u> as large. DirecTV and EchoStar combined are larger than all but two of the nation's cable companies.

Growth in Non-Cable MVPD Households
December 1993 – July 1999

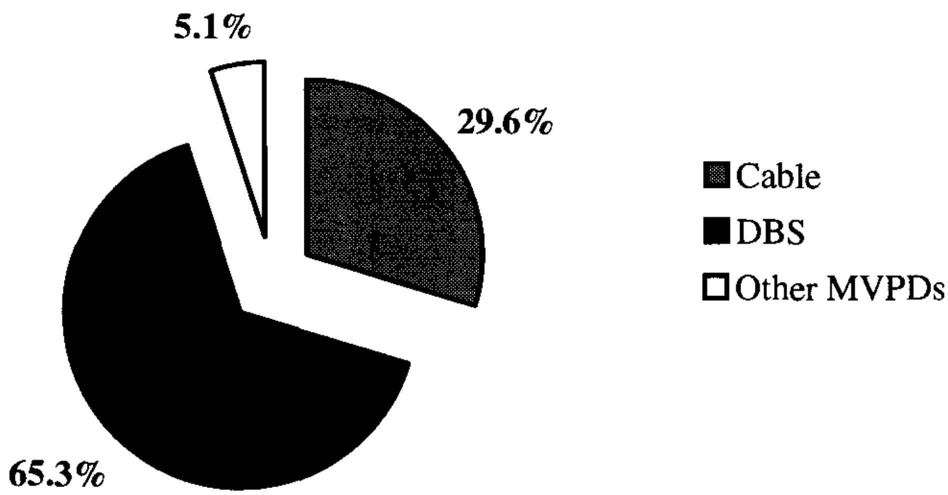


Source: FCC Fourth Annual Report at Appendix E, FCC Fifth Annual Report at Appendix C-1; NCTA Estimate (see table above).

Eighteen percent of multichannel TV households now get their multichannel video programming from a source other than the local cable operator, and there is no indication that this trend will diminish or reverse course.

Over the past year alone, almost 4 million additional households signed up for multi-channel video service. Seven out of ten chose a provider other than the traditional local cable operator – usually DBS. This year, as compared to last year, more than 2 out of 3 new subscribers chose DBS over cable service. In other words, cable attracted only 29.6% of net new subscribers, while DBS captured 65.3 %.[3] Thus, while subscribers may have little reason to switch providers if their cable operator is offering competitive service at competitive prices, it is hard to doubt that DBS and cable are viewed by consumers as fully substitutable, competitive products.

Distribution of New Multichannel Households in 1999



Source: Paul Kagan Associates, Inc. Cable Program Investor, July 14, 1999, p. 4.

As shown below (and as NCTA discussed last year), evidence of the substitutability of cable and DBS should not be surprising, because the primary perceived barriers to such substitutability – high service fees, up-front costs, and inability to receive local broadcast signals

[3] Paul Kagan Associates, Inc. Cable Program Investor, July 14, 1999, p. 4.

– have virtually disappeared. The availability virtually everywhere of a substitutable product that is steadily and rapidly adding millions of subscribers nationwide is a clear sign that the video marketplace has become competitive.

In previous years, however, the Commission, while acknowledging all these trends and earmarks of competition, has nevertheless suggested that because cable's share of subscribers remains relatively high, the marketplace may not yet be fully competitive. This interpretation of cable's market share misses the mark and should be corrected.

A high market share may, in some circumstances, be indicative of the absence of competition in a relevant market. But not here. A new, fully substitutable product is challenging an incumbent that had formerly served almost 100 percent of the market. That the incumbent's market share, while steadily diminishing, remains high is hardly proof that it can continue to exercise any significant market power.

And this is especially true where, as in the unusual case of DBS, the new competitor has the capacity to add new subscribers throughout the geographic market at virtually no marginal cost. In these circumstances, the presence of a good substitute is likely to constrain the incumbent's market power long before the incumbent's market share is eroded. And, indeed, the incumbent's market share may remain high only because it is responding to its new competitor in an effective, competitive manner.[4]

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[4] Two of the Commissioners came to the conclusion last year that the percentage of market share is not the sole test of competitiveness. See Separate Statement of Commissioner Ness, Fifth Annual Report, ("the level of competition in the multichannel video market share should not be measured solely by whether cable continues to lose market share. If cable operators use competitive response to retain customers, so much the better. We should not fault the cable industry for beefing up its service quality, for example, in light of growing competition."); Separate Statement of Commissioner Michael Powell, Fifth Annual Report, ("what must be understood is that market share alone does not support the conclusion that a given cable operator is exercising market power to the detriment of consumers.")

Economists Incorporated explains, in greater detail, why this is so.[5] EI notes, generally, that "while a firm's market share can, under some conditions, be used to infer its ability to exercise market power, it is not true that a large market share necessarily enables a firm to exercise market power."[6] Market shares generally reflect the relative success of market participants in the past. For example, cable's high market share may be indicative of the fact that cable operators once, not long ago, faced little competition in the MVPD marketplace.[7] Market power, in contrast, is "a function of how consumers and alternative suppliers would respond in the future in the event that a firm tries to raise prices above competitive levels."[8]

Relying exclusively on market shares to measure market power, therefore, "may provide misleading answers to the economic questions raised."[9] As EI points out, antitrust agencies, even when they are evaluating proposed mergers that would increase market shares, typically consider factors other than market share that might be relevant to the exercise of market power.[10] All the more reason, according to EI, to consider non-structural factors, such as the ubiquitous presence of a good substitute, "in situations where normal market forces are actually reducing concentration."[11] For example, where a patent expires and new competitors are able to enter a market for the first time, the original patentholder "may still have 90 percent of the market and yet find itself unable to raise prices above the levels established by its new competitors. In this

[5] See attached paper, "Use and Limitations of Structural Indicia of Market Power," Economists Incorporated, August 1999 ("EI Paper").

[6] EI Paper at 2.

[7] This does not necessarily mean, of course, that, even then, cable operators had market power – because an analysis of shares of MVPD subscribers ignores any constraining effects that other sources of video programming (such as broadcasters and video stores), as well as other sources of entertainment, may have had on the price and competitive behavior of cable operators.

[8] EI Paper at 2.

[9] Id. at 5.

[10] Id. at 6.

[11] Id. at 6.

case, the relatively large market share is indicative not of market power but merely of competitive pricing by the former monopolist!"[12]

With respect to the video marketplace, a key factor that suggests the absence of significant market power despite cable's relatively high market share is the fact that, as EI explains:

> there is virtually no limit to the capacity of DBS providers to expand the number of customers they serve. DBS providers can expand output almost instantaneously because they already have invested in 100 percent national coverage [and] even at expanded service levels, the marginal cost of serving each DBS customer remains very low. For these reasons, the supply elasticity of DBS providers is likely sufficient to constrain any attempt to increase cable rates or otherwise exercise market power.[13]

Thus, the Commission should focus on (1) whether DBS and others that compete with incumbent cable operators appear to be good substitutes for cable and (2) whether cable appears to be responding to DBS and others in a competitive manner (i.e., by improving the value of its service, with respect to price and quality, in order to retain and increase subscribership). As we show below, DBS offers a product that is comparable to cable's in price and content, and consumers view DBS and cable as good substitutes for each other. The evidence indicates that cable is responding in a competitive manner to the substitutes that are available to consumers in the video marketplace.

[12] Id. at 6-7 (emphasis added).

[13] Id. at 10 (emphasis added).

B. DBS Is the Leading Competitor to Cable.

1. DBS growth is accelerating.

The growth in DBS subscribership is still accelerating. The industry officially reached the 10 million customer mark in June of this year.[14] This includes the 5.3 million high-power DirecTV customers, 2.1 million PrimeStar medium-power customers (recently-acquired by DirecTV) and the 2.6 million EchoStar Dish Network subscribers.[15] Some industry analysts now expect DBS to "exceed 15% and even 20% penetration of U.S. TV households over the next five years despite the accelerated national rollout of digital cable."[16] The satellite business could reach by some estimates 20 to 25 million customers by 2005.[17]

DBS' continued rapid growth is attributable to a variety of factors, including further decline in up-front consumer equipment costs, an array of channel offerings and packages at prices comparable to cable, and improved marketing and promotions.[18] The industry has adopted aggressive policies to consolidate the direct-to-home satellite business and reach more customers. Over the past year, DirecTV, the largest DBS company, acquired U.S. Satellite Broadcasting (USSB) and PrimeStar. The acquisition of USSB gives DirecTV eight more high-power frequencies, split between two orbital slots, and allows the DBS provider to offer unified

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[14] "Hot June Nudges DBS Above 10M," Multichannel News, July 19, 1999 at 18.

[15] Id.

[16] "DBS Inches Toward Long-Awaited 10M Mark," Cable World, April 12, 1999 at 9, (emphasis added).

[17] Id., "DBS Eyes Another Strong Year," Multichannel News, May 17, 1999; The Yankee Group recently predicted that DBS will grow to 16.5 million subscribers by 2003. "Direct Broadcast Satellite: 10 Million and Still Growing," www.yankeegroup.com.

[18] Id., Status of Competition to Cable Television, United States General Accounting Office, July 8, 1999 at 14-15 ("GAO Report").

packages of basic and pay networks.[19] With its acquisition of Primestar, DirecTV nearly doubled its subscriber base from 3.75 million in July 1998 to 7.45 million in July 1999.[20]

In 1999, DirecTV also sought and obtained programming rights for DreamWorks and New Line Cinema movies in high definition and renewed its exclusive deal for National Football League and National Basketball Association games.[21] It launched its first original pay-per-view series, "The Lost World," and will offer its first nationwide high definition channel, HBO HDTV, in August of this year.[22] As further evidence of the industry's momentum and investor confidence in its future broadband capabilities, Hughes Electronics, the parent of DirecTV, entered into a $1.5 billion deal with America Online in June to provide television and interactive services through DirecTV.[23] This pact was greeted favorably by analysts for its future broadband capabilities and competition to cable.[24]

DBS subscribership jumped from 7.25 million to 10.05 million between July 1998 and July 1999.[25] This amounts to a 38.6 percent annual growth rate. DirecTV reported that it added 117,000 net new customers in June, a 46 percent increase over subscribers added in June 1998.[26] DirecTV also reported that "the company's subscriber growth was 48 percent higher, at 673,000 net new customers, than it was for the first six months of last year."[27] This figure does not

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19 "DBS Inches Toward Long-Awaited 10M Mark," Cable World, April 12, 1999.

20 See SkyREPORT. DirecTV reported that it has converted 20,000 Primestar customers to its high power service and has targeted another 200,000 for the transition.

21 "DirecTV Gets DreamWorks For HDTV," SkyREPORT, June 23, 1999; "DirecTV Re-Signs NFL Sunday Ticket," Multichannel News Online, January 25, 1999 (exclusive pay-per-view distribution of out-of-market games through 2002); "DirecTV Viewers Choice Announce NBA Deals," SkyREPORT, August 6, 1999.

22 "DirecTV Plans PPV Series," Multichannel News, July 26, 1999 at 38.

23 "DirecTV, Hughes Part of AOL's 'Broadband Tapestry'," SkyREPORT, June 22, 1999

24 Id.

25 SkyREPORT, July 1999.

26 "Hot June Nudges DBS Above 10 M," Multichannel News, July 19, 1999 at 18.

27 Id.

include customers acquired from DirecTV's purchases of USSB or Primestar. DirecTV's acquisition of Primestar is "going to mean more pressure for cable, more pressure to upgrade and more pressure to give a good product."[28]

EchoStar, too, experienced strong subscriber growth. It increased its subscriber base by 88 percent over the last year, from 1.38 million to 2.6 million.[29] And EchoStar reported adding 105,000 net new subscribers to its DISH network in June of this year, which marked a 50 percent increase over June 1998.[30] The company acquired a total of 657,000 net new subscribers in the first half of 1999, a 92 percent increase over subscriber additions in the first half of 1998.[31] Meanwhile, EchoStar closed its acquisition of NewsCorp and MCI Worldcom's American Sky Broadcasting, Inc. in June. As a result of the deal, it gained 28 transponders, and two high-power satellites set to be launched later this year.[32]

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[28] "P'Star Debt May Bring Regret", Daily Variety, January 25, 1999.

[29] SkyREPORT, July 1999. (See www.skyreport.com/skyREPORT/dth_us.htm)

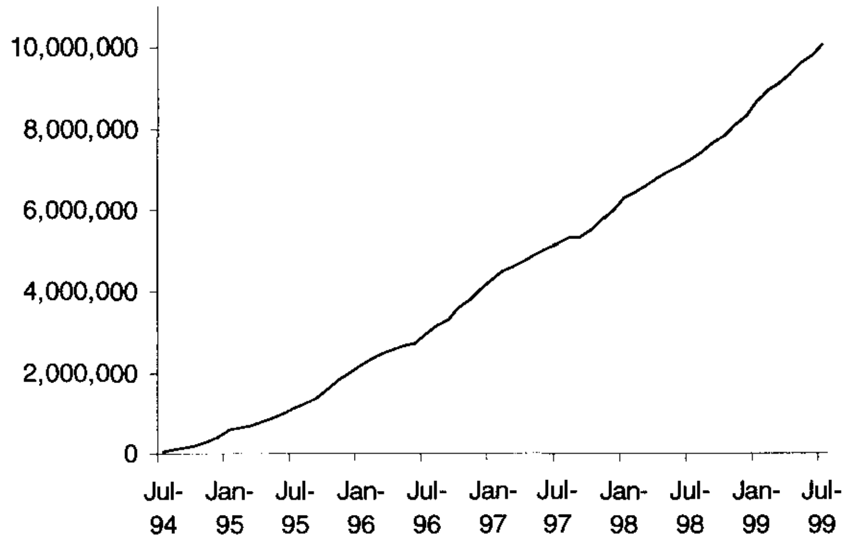
[30] "Dish Posts 105K June Sub Growth," Multichannel News Online, July 14, 1999.

[31] Id.

[32] "EchoStar Closes ASkyB Deal," Multichannel News Online, June 25, 1999.

This dramatic growth in DBS subscribership is demonstrated year after year:

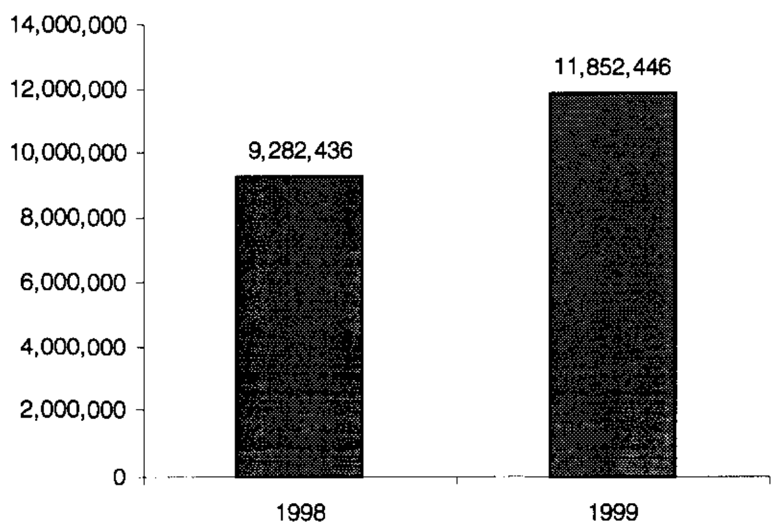
Growth in DBS Subscribership July 1994 – July 1999



Source: SkyREPORT

When C-band satellite customers are combined with high power DBS customers, satellite subscribership grew from approximately 9.28 million to 11.85 million since mid-1998, a 28 percent increase.

Direct-to-Home Subscribership July 1998 to July 1999



Source: SkyREPORT

Aggregate national numbers only tell part of the story. DBS is attracting customers at higher than average rates in at least 39 states across the country. As we demonstrated last year, satellite penetration of television households (including C-Band) is 10 percent or greater in the following states and reaches over 15 percent in 25 of those states.

States With Direct-To-Home (DTH) Dish Penetration of Ten Percent or More

State	DTH Penetration
Montana	35.33%
Vermont	32.29%
Wyoming	25.22%
North Dakota	22.42%
Mississippi	22.08%
Arkansas	21.04%
North Carolina	20.64%
Idaho	20.19%
Kentucky	20.14%
Maine	19.87%
South Dakota	19.40%
West Virginia	19.16%
South Carolina	18.65%
Missouri	17.84%
Alabama	17.70%
Utah	17.63%
Indiana	17.49%
Iowa	17.21%
Tennessee	17.20%
New Mexico	17.00%
Oklahoma	15.97%
Oregon	15.53%
Nebraska	15.53%
Kansas	15.51%
Wisconsin	15.10%
Georgia	14.93%
Texas	14.81%
Colorado	14.46%
Virginia	14.21%

Arizona	13.56%
Minnesota	13.45%
Michigan	13.23%
Washington	12.80%
Louisiana	12.44%
Nevada	11.80%
Florida	11.33%
New Hampshire	10.93%
Ohio	10.08%
Delaware	10.07%

Source: SkyREPORT, May 1999.

As DBS continues to smash old subscriber records, the industry is showing no signs of leveling off.

2. DBS and cable are substitutable products.

The Commission noted in the Fifth Annual Report that "DBS represents a substitute for some consumers, especially those with access to local broadcast stations."[33] It maintained that as DBS equipment prices continue to drop, and if DBS operators are able to offer local stations, "DBS may become a closer substitute to cable for an increasing number of consumers."[34] But NCTA submits, as the Justice Department recognized last year, that DBS and cable are substitutable products *now*.[35]

DBS equipment prices have fallen and, more importantly, the factor that the Commission cited as limiting DBS's ability to compete with cable – the inability to retransmit local broadcast

[33] Fifth Annual Report at ¶63.

[34] Id.

[35] United States v. Primestar, Inc., No. 1: 98CV01193, Complaint, ¶63 (D.D.C. May 12, 1998) ("while the programming services [DBS and cable] are delivered via different technologies, consumers view the services as similar and to a large degree substitutable. Indeed, most new DBS subscribers in recent years are former cable subscribers who either stopped buying cable or downgraded their cable service once they purchased a DBS system." (emphasis added))

stations – seems about to disappear. Congress is finalizing legislation, passed by both the House and Senate, that will give DBS providers a copyright license for the retransmission of local broadcast stations (and distant network affiliates in some unserved areas).[36] As part of the compromise legislation, DBS is not likely to have cable's full must carry obligations but will be permitted to phase-in must carry over time.

In any event, as NCTA pointed out last year, the inability to carry local signals has not been a serious impediment to DBS because of the ease with which such signals can now be received over the air. As shown, sophisticated and effective set top and rooftop antennas are now available at low cost, and the DBS and consumer electronics industries have joined forces to show consumers how to select the best antennas for their particular circumstances.[37] Even the broadcast industry (which in the context of must carry rules, has been skeptical of the use of antennas by cable subscribers) has argued this past year that consumers can easily purchase antennas to supplement DBS service at insignificant cost.[38]

The evidence shows that DBS providers are competing head-to-head with cable systems. DBS offers a host of widely popular and niche-oriented satellite cable program networks, pay-

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[36] The U.S. House and Senate recently passed versions of H.R 1554, the Satellite Copyright, Competition and Consumer Protection Act of 1999, which give DBS companies the right to retransmit local broadcast signals back into their local markets. NCTA supports pro-competitive satellite legislation, including "local-to-local" and must carry for DBS.

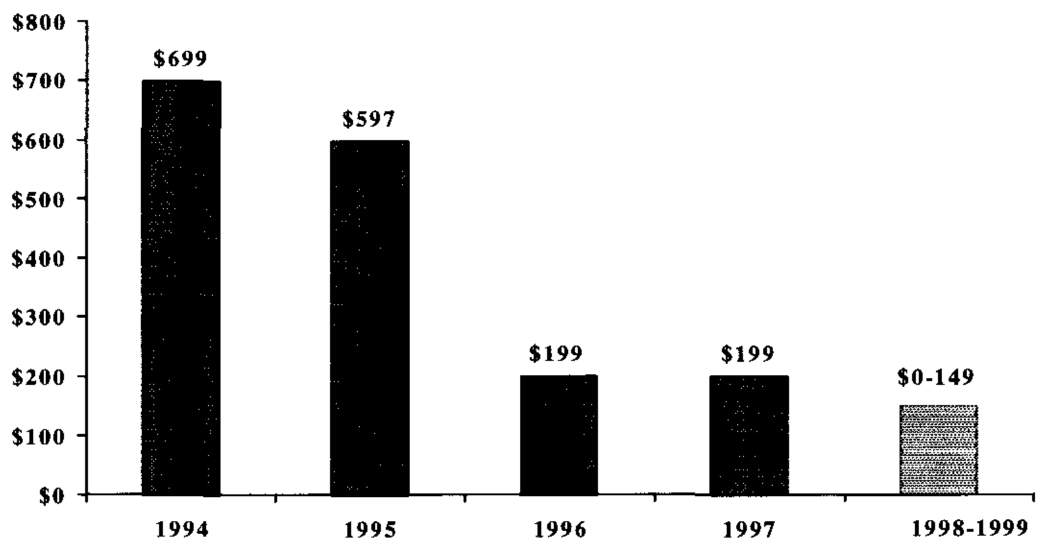
[37] See e.g. Comments of NCTA, CS Docket No. 98-102, July 31, 1998 at 16-17; "CEMA Readies Antenna Maps for Dealers," Multichannel News, August 10, 1998.

[38] Letter to Senator John McCain from Edward O. Fritts, President & CEO, NAB, January 29, 1999 ("the vast majority [of DBS subscribers] resides in areas where over-the-air signals can be received with in-home antennas .... While some subscribers in fringe areas may require outdoor antennas, this is a modest burden.") It is significant to note that if local broadcast stations can be easily accessed via today's antennas, it means that *two* of the principal asserted bases for must carry no longer exist. The argument in support of must carry is that cable operators have an anti-competitive incentive not to carry local broadcast stations, with which they compete for advertising dollars, even if such stations might be more attractive to subscribers than other services carried by the cable systems. But this argument presumed, first, that cable was a bottleneck – that subscribers to cable could not receive broadcast stations unless operators chose to carry them. And, second, it presumed that cable operators faced no effective competitors that would carry attractive local broadcasters that operators chose not to carry for anti-competitive reasons.

per-view movies, exclusive major league and sports packages. The rapid rise in DBS subscribership – where now seven out of ten new customers turn to DBS and other MVPDs over cable – combined with the steady decline in cable's market share over the past five years belie the notion that DBS is merely a complementary, rather than substitutable, service.

The other alleged impediment to DBS' status as a substitutable service – the up-front costs for satellite equipment – carries no weight anymore. As the Commission recognized in the Fifth Annual Report, satellite equipment prices and installation have consistently declined since 1996. Indeed, since 1998, they have virtually disappeared.

DBS Satellite Dish Prices



Source: 1994 Annual Report, 9 FCC Rcd 7442, 7445 (1994).

Echostar, for example, offers customers a free DISH network system plus basic installation when they sign up for one year of its programming package, America's Top 100 CD and three premium movie packages for $56.98 per month (after $298 rebate).[39] If consumers commit to one year of the same programming service and two premium movie packages for

[39] http://www.dishnetwork.com/promos/DEAL.HTM

$48.98 per month, they receive a free satellite TV system and self-installation kit (or $99 professional installation) after $199 rebate.[40]

DISH NETWORK ONE-RATE PLAN

AFTER $298 REBATE
Free DISH Network System (Model 3720) **PLUS** Basic Professional Installation - or - Second Receiver* (Model 2700) when you commit to one year of America's Top 100 CD and THREE Premium Movie packages for $56.98 per month.
Pricing Excludes $4.99/month Additional Receiver Access Fee.[41]

DBS and cable also offer packages of programming for similar prices. DirecTV offers its Select Choice package, which it describes as "a great cable replacement value with over 40 popular channels" for $19.99 per month.[42] The next step up is DirecTV's Total Choice package with over 95 channels, which sells for $29.99 per month.[43] For an additional $10 per month, subscribers receive 13 premium commercial-free movie channels, and for an additional $15 to $18 per month, they receive a different group of premium movie channels. According to the Commission's most recent cable price survey, the average monthly rate for the basic and cable programming service tiers and equipment for systems subject to effective competition was $28.71 as of July 1, 1998 and the average rate for systems not subject to effective competition was $30.53 for the same period.[44]

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[40] Id.

[41] Id.

[42] http://www.directv.com/overview/overviewpages.html.

[43] Id.

[44] Report on Cable Industry Prices, MM Docket No. 92-266, ¶4, released May 7, 1999.

DBS' prices are dramatically lower than where they were five, even two, years ago. And with lower equipment costs and new discount pricing strategies, DBS companies have become more effective in targeting new MVPD customers, as well as existing cable customers. Thus, DBS and cable are essentially comparable services and compete for essentially the same customer base. While each has different characteristics and offers a somewhat different programming mix (e.g. locally-originated programming on cable and more exclusive sports programming on DBS), these differences are largely insignificant to many customers in evaluating which service to purchase.

3. DBS has increased joint marketing efforts to lure customers.

The joint marketing trend identified by the Commission in the Fifth Annual Report has accelerated in the past year. DBS is teaming with other competitors – most significantly, local telephone companies and America Online – as part of full-service and multi-service offerings. As one analyst put it:

> I think DBS, just from the success it's had reaching a critical mass, is gaining momentum and is a threat to take away significant subscribers from cable operators. . . . The deals with telcos are one more step in that direction.[45]

The DBS industry received a major boost last year when Bell Atlantic began marketing DirecTV and USSB to its 5 million single family residences in Washington D. C., New Jersey and Delaware and its 2.5 million multiple-dwelling unit customers in those areas and in New York, Boston and Philadelphia.[46] In May 1999, Bell Atlantic began offering DirecTV to the millions of customers it serves in the Pittsburgh and Boston markets.[47] This strategy makes it easy for customers to sign up without having to go through a retail outlet. And it provides access

[45] "Bell Atlantic offers video," Carl Weinschenk, www.teledot.com/news0998/news091698, ("C. Weinschenk")

[46] Id.

[47] http://skyreport.com/skyreport/maynews/052799.htm

to local broadcast signals. Bell Atlantic devised a method of integrating advanced antenna equipment – tested against local market signal strength and determined on a zip code-by-zip code basis – into the package.[48]

As shown below, Bell Atlantic touts its digital TV service through DirecTV as "the cable alternative":

> If you've ever wanted an alternative to your current cable service, make the cable comparison. DirecTV provides you with more entertainment choices and greater variety.[49]

Benefits Over Cable Systems

> Typical mini-dish or cable services don't offer the number of channels and depth of programming you can enjoy from DIRECTV. See how the typical cable company compares:

DIRECTV® from Bell Atlantic Video		Typical Cable TV
Over 210 available channels with digital-quality picture and sound	YES	NO
5 HBO®, 2 HBO Family and 3 Cinemax® multichannels	YES	NO
5 Showtime® and 2 The Movie Channel™ multichannels plus FLIX	YES	NO
3 Cinemax multichannels	YES	NO
4 STARZ! multichannels	YES	NO
8 Encore multichannels	YES	NO
Up to 55 pay per view choices each day	YES	NO
Over 25 specialty sports networks	YES	NO
Interactive on-screen program guide	YES	NO

Source: http://www.bell-atl.com/digitaltv/cable_comp.htm

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48 C. Weinschenk, supra.

49 http://www.bell-atl.com/digitaltv/programming.html .

SBC Communications, one of the nation's biggest telephone companies, has entered into a "wide-ranging marketing and distribution partnership with DirecTV."[50] According to the company, the deal:

> puts SBC significantly closer to becoming a one-stop-shopping provider of communications and entertainment services, while enhancing DirecTV's access to SBC's residential customers within California, Nevada, Texas, Oklahoma, Missouri, Arkansas and Kansas.[51]

SBC will begin marketing DirecTV to its 18 million residential customers as part of integrated packages of services "at a compelling price point" this fall.[52] DirecTV's Vice President for Special Markets, Sales and Distribution believes "this expanded relationship provides consumers in SBC's territory with a strong alternative to cable."[53] And, according to another DirecTV executive, the revenue potential from being able to sell DirecTV to the 18 million SBC customers was "a motivational force in getting the deal done."[54] According to press reports, SBC is considering giving away DirecTV dishes in promoting the service to its customers.[55]

As NCTA pointed out last year, incorporating DirecTV into a full suite of services from a single provider increases the competition to cable television systems in two ways. First, having monopoly local exchange carriers market DBS services directly to the millions of households that they serve will only enhance the competitive presence and potential of DirecTV. And second, to the extent that voice, video and data providers continue to converge into full service

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[50] "SBC-DirecTV Deal Is Set, Executives Say," The New York Times, July 16, 1999, "DirecTV Signs SBC Deal," Electronic Media, July 26, 1999 at 21.

[51] Press Release, "SBC Signs Strategic Marketing Agreement with DirecTV to Offer Television Entertainment Programming to Its 18 Million Residential Customers," July 16, 1999.

[52] Id.

[53] Id.

[54] "DirecTV Signs SBC Deal," Multichannel News, July 26, 1999.

[55] Id.

providers, cable operators will have to ensure that their own service offerings compare favorably with Bell Atlantic and SBC's video services that are combined with already-established phone and Internet service.[56]

In addition to telephone companies, the DBS industry has entered into joint ventures with Internet-based companies. As noted earlier, in June of this year, the dominant Internet provider, AOL, committed to using DBS to provide high-speed service to its subscribers. Under the terms of the pact with Hughes Electronics and its subsidiary, DirecTV, AOL will market the DirecTV/AOL TV package to more than 19 million AOL and CompuServe members and to millions of other consumers with access to these Internet services. DirecTV will market AOL TV to its 7 million-plus customers and to potential new subscribers through its retail network. Hughes will offer AOL-Plus via its DirecPC satellite broadband Internet network by early 2000.[57]

In the view of one analyst at Strategy Analytics, "the two players [AOL and DirecTV] combined make a powerful force. Together they currently own 24 million subscriptions to premium interactive and entertainment services worldwide, generating some $6 billion in customer fees. There are also clear synergies in their technology and market positioning."[58]

Another analyst with Bank of America Securities noted that "the AOL investment is a stamp of approval on the validity of delivering both one and two-way, user-friendly satellite broadband at consumer price points."[59]

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[56] See Comments of NCTA, CS Docket No. 98-102, July 31, 1998 at 27.

[57] Press Release, "America Online and Hughes Electronics Form Strategic Alliance to Market Unparalleled Digital Entertainment and Internet Services," June 21, 1999.

[58] "Analysts Comment on AOL/Hughes Pact," http://skyreport.com/skyreport/june99/062399.htm (emphasis added).

[59] Id.

EchoStar, too, has aligned itself with a major Internet player, Microsoft's WebTV. The EchoStar DISH Network and Microsoft WebTV Network Plus service combined to offer digital satellite television programming with Internet TV, including digital video recording, advanced electronic program guide, broadband data delivery and video games.[60] EchoStar's DISHPlayer claims that its service will turn "the 'World Wide Wait' into the 'World Wide Wonder'" by making the exploration of the Internet easy and affordable.[61]

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In sum, these strategies put to rest any notion that DBS is a "high-end" niche product, ill-equipped to appeal to the millions of average MVPD customers in urban, suburban and rural communities throughout the country.

C. <u>Telephone Companies Are Competing With Cable Using A Variety of Distribution Technologies</u>.

In the Fifth Annual Report, the Commission observed that telephone companies are still "weighing their options for entry" into the video marketplace.[62] While noting that the competitive presence of LECs in the video market is growing, it questioned whether they will "become nation-wide competitors to the cable industry."[63] As discussed in the previous section, the aggressive partnering of DirecTV with telephone giants, Bell Atlantic and SBC, over the past nine months gives the telephone industry immediate broad reach in competing with cable on a national basis. Indeed, this marriage is seen by many analysts as not only a major threat to cable

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60 Press release, "Echostar Communications Corp., WebTV Networks Introduce First Internet TV Satellite Product and Service," January 7, 1999.

61 "DISHPlayer Turns Your Ordinary TV Into Extraordinary TV," Introducing EchoStar's DISHPlayer, <u>http://www.dishnetwork.com</u> at 1.

62 Fifth Annual Report at ¶111.

63 <u>Id</u>.

television, but a harbinger of a whole new world of highly competitive integrated packages of voice, video, and high-speed data services. As one analyst noted:

> There are several reasons that these deals are troublesome to cable operators. The most obvious, of course, is the sheer number of potential subscribers involved. Beyond that, it is possible that at some point the telcos will use the current video entertainment arrangement as a template for broadcast data distribution. Such an effort could come from Hughes Electronics Corp., which owns both DirecTV and satellite data service DirecPC and could offer telco customers satellite data service Direct, and could offer telco customers DirecDuo, the combined DirecTV/DirecPC offering.[64]

Telephone companies have a distinct advantage in marketing additional residential communications services such as video programming – they currently provide service to almost 100% of residential households. The opportunity to offer almost 100% of households one-stop-shopping can not be matched by any other communications media today. In order to meet this competitive force, cable companies must continue to upgrade facilities, and provide better programming, value and service to its customers.

1. Wireline Provision of Video.

While Bell Atlantic and SBC have chosen DBS as a fast, relatively low-cost and low-risk means to enter the video marketplace, other telephone companies continue to build their own video-capable facilities on a community-by-community basis. Ameritech, for example, has acquired cable franchises in more than 107 cities and towns reaching more than 1 million television households.[65] It has already deployed hybrid fiber-coaxial cable facilities in 90 communities in the Cleveland, Chicago, Detroit and Columbus, Ohio metropolitan areas, serving approximately 200,000 cable customers with its americast™ service in competition with

[64] C. Weinschenk, supra (emphasis added).

[65] Id.